

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

PHILIP LEE; PAMELA WHITE;
PATRICIA VANDUSEN;
RONALD ALLIX; AND RANDY
WELCH, individually and on behalf of
others similarly situated,

Plaintiffs,

v.

BELVOIR MEDIA GROUP, LLC,

Defendant.

Case No. 4:22-cv-12153

Hon. Shalina D. Kumar

Magistrate Judge David R. Grand

**DEFENDANT BELVOIR MEDIA GROUP, LLC’S
MOTION FOR LEAVE TO FILE RESPONSE
TO NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendant Belvoir Media Group, LLC (“Belvoir”) respectfully moves the Court for leave to file a response to Plaintiffs’ Notice of Supplemental Authority (the “Notice”), filed March 31, 2023 (ECF No. 27).

1. In their Notice, Plaintiffs enclosed, mischaracterized, and made arguments based on *Batts v. Gannett Co.*, Case No. 4:22-cv-10685, ECF No. 28 (E.D. Mich. Mar. 30, 2023), a decision of this Court.

2. In view of Plaintiffs’ misstatements and arguments, Defendant respectfully seeks leave to submit a response to Plaintiffs’ Notice. The proposed Response to Notice of Supplemental Authority is attached hereto as Exhibit A.

3. Defendant further respectfully requests oral argument on its pending motion to dismiss (ECF No. 18) given the complexities of the issues in this case, as exemplified by recent similar decisions.

4. Pursuant to Local Rule 7.1(a), Defendant's counsel certifies that on April 12, 2023, they communicated with Plaintiffs' counsel, explaining the nature of the relief sought in this Motion and seeking concurrence in that relief. Plaintiffs' counsel stated that Plaintiffs would not oppose a three-to-five-page response to the Notice. Plaintiffs further stated they believe oral argument is not necessary.

Dated: April 12, 2023

Respectfully submitted,

/s/ Kristen C. Rodriguez

Kristen C. Rodriguez
Deborah H. Renner
DENTONS US LLP
1221 Avenue of the Americas
New York, New York 10020
(212) 768-6700
kristen.rodriguez@dentons.com
deborah.renner@dentons.com

Peter B. Kupelian (P31812)
Carol G. Schley (P51301)
CLARK HILL PLC
151 South Old Woodward Ave., Suite 200
Birmingham, MI 48009
(248) 530-6336
pkupelian@clarkhill.com
cschley@clarkhill.com

*Counsel for Defendant
Belvoir Media Group, LLC*

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**BRIEF IN SUPPORT OF DEFENDANT BELVOIR MEDIA GROUP, LLC'S
MOTION FOR LEAVE TO FILE RESPONSE
TO NOTICE OF SUPPLEMENTAL AUTHORITY**

STATEMENT OF ISSUES PRESENTED

1. Whether Belvoir should be granted leave to file a response to Plaintiffs' misstatements and arguments in their Notice of Supplemental Authority?

Defendant's Answer: YES.

2. Whether oral argument would assist the Court in reaching a determination on Belvoir's motion to dismiss the First Amended Complaint given the complexity of the issues before the Court?

Defendant's Answer: YES.

STATEMENT OF CONTROLLING/MOST APPROPRIATE AUTHORITY

The controlling and most appropriate authority for this Motion includes:

1. *United States v. Van*, No. 06-20491, 2021 WL 4962139, at *2 (E.D. Mich. Oct. 26, 2021).
2. *Tokarczyk v. A.G. Edwards & Sons, Inc.*, No. 08-12481, 2009 WL 1025392, at *1 n.1 (E.D. Mich. Apr. 15, 2009).
3. *Batts v. Gannett Co.*, Case No. 4:22-cv-10685, ECF No. 28 (E.D. Mich. Mar. 30, 2023).

Defendant Belvoir Media Group, LLC (“Belvoir”) respectfully seeks leave to submit a response to Plaintiffs’ Notice of Supplemental Authority (the “Notice”), filed March 31, 2023 (ECF No. 27). Belvoir further requests oral argument on its motion to dismiss (ECF No. 18) in view of the complexity of the issues in this case and the changing legal landscape.

ARGUMENT

In their Notice, Plaintiffs enclosed, misstated, and made arguments on *Batts v. Gannett Co.*, No. 4:22-cv-10685, ECF No. 28 (E.D. Mich. Mar. 30, 2023), a decision of this Court. Plaintiffs wrongly stated or implied that: (1) this Court had ruled or considered whether plaintiffs in *Batts* had adequately pled disclosure under Rule 12(b)(6) and further, that this Court had considered *Nashel v. New York Times Co.*, No. 2:22-cv-10633, 2022 WL 6775657 (E.D. Mich. Oct. 11, 2022) in doing so; (2) the *Batts* defendant had made the same arguments on Article III standing as Belvoir did in its motion to dismiss; and (3) this Court had considered arguments on COVID-19 tolling and had further considered arguments on the effect of such tolling on absent class members and the date range applicable to the putative class.

In view of Plaintiffs’ misstatements and arguments, which would provide Plaintiffs with an unfair advantage if left unanswered, Defendant respectfully seeks leave to submit a response to Plaintiffs’ Notice. *See, e.g., Tokarczyk v. A.G. Edwards & Sons, Inc.*, No. 08-12481, 2009 WL 1025392, at *1 n.1 (E.D. Mich. Apr. 15, 2009)

(denying a motion to strike a response and notice of supplemental authority but granting the opportunity to file a supplemental pleading to address newly raised arguments and caselaw); *United States v. Van*, No. 06-20491, 2021 WL 4962139, at *2 (E.D. Mich. Oct. 26, 2021) (allowing defendant to file a response to a notice of supplemental authority concerning an opinion entered after briefing to argue new opinion was wrongly decided); *Smith v. Stellar Recovery, Inc.*, No. 15-cv-11717, 2017 WL 1336075, at *8 (E.D. Mich. Feb. 7, 2017) (allowing defendant to respond to plaintiff's notice of supplemental authority). The proposed Response to Notice of Supplemental Authority is attached hereto as Exhibit A.

Defendant further respectfully requests oral argument on its pending motion to dismiss (ECF No. 18) given the complexities of the issues in this case, as exemplified by recent similar decisions.

CONCLUSION

For the foregoing reasons, Belvoir respectfully requests that it be granted leave to file a response to Plaintiffs' Notice of Supplemental Authority and that it also be granted oral argument on its pending motion to dismiss.

Dated: April 12, 2023

Respectfully submitted,

/s/ Kristen C. Rodriguez
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DENTONS US LLP
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151 South Old Woodward Ave., Suite 200
Birmingham, MI 48009
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pkupelian@clarkhill.com
cschley@clarkhill.com

*Counsel for Defendant
Belvoir Media Group, LLC*

Certificate of Service

I hereby certify that on April 12, 2023, a copy of the foregoing document was filed electronically and served by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing.

/s/ Kristen C. Rodriguez
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